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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,128	08/28/2003	John Rolph	906	4767

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EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,128

Applicant(s)

ROLPH, JOHN

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how can the cap can be made up from nylon which is flexible.

2. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore et al. (5775722) in view of Spector (5135222). Moore teaches a cover having a cylindrical outer housing 12 closed at the upper end of an upper housing cover 18, and a conduit formed about the lower circumference of the outer housing near the entry of the orifice as shown in Figs. 2, and 3.

Moore meets all claimed limitations except for the dimension of the cover and the spring clip. It would have been obvious to one of ordinary skill in the art to make the cover in the claimed dimension, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

Furthermore, it would have been obvious to one of ordinary skill in the art to change the size of the cover in Moore to accommodate the desired content.

With respect to the clip, Spector teaches that it is known in the art to provide a spring clip
10. It would have been obvious to one of ordinary skill in the art to provide a spring clip in Moore as taught by Spector to close the bag easily.

Regarding claim 3, the materials (col. 2, lines 25-26) are light impenetrable materials as claimed.

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3. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Moore rejection, as set forth above in paragraph 2, and further in view of Romero, Jr. et al. (6102076). It would have been obvious to one of ordinary skill in the art to provide to the fire resistant nylon material in Moore as taught by Romero, Jr. (col. 2, ln. 7; col. 2, ln. 56) to provide the desired material for the cover.

4. Claims 1-3, and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Romero, Jr. et al. (6102076) in view of Moore et al. (5775722), and further in view of Spector. It would have been obvious to one of ordinary skill in the art to provide to provide a circumscribing conduit in Romero as taught by Moore et al. to provide an alternative fastening means for the cover. With respect to the impinging clip, Spector teaches that it is known in the art to provide a spring clip 10. It would have been obvious to one of ordinary skill in the art to provide a spring clip in Moore as taught by Spector to secure the device easily.

With respect to the change in size, It would have been obvious to one of ordinary skill in the art to make the cover in the claimed dimension, since such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art.

5. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the Moore rejection as set forth in paragraph 2 or the Romero rejection in paragraph 4, and further in view of Kumasaka (4477247). It would have been obvious to one of ordinary skill in the art to provide a cap in either Moore or Romero as taught by Kumasaka to provide an alternative attachment location for the cap.

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It is noted that tying a cap to the strap, the cap would be integrally attached to the fastening means along with the drawstring.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

